

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DIANA L. EVENSON

Claimant

VS.

PRESTIGE, INC.

Respondent

AND

LIBERTY MUTUAL INSURANCE COMPANY

Insurance Carrier

Docket No. 239,116

ORDER

Claimant appeals from the Award entered by Administrative Law Judge Jon L. Frobish on January 5, 2000.

APPEARANCES

William L. Phalen of Pittsburg, Kansas, appeared on behalf of claimant. Gregory D. Worth of Lenexa, Kansas, appeared on behalf of respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The only issue on appeal is the nature and extent of claimant's disability. The Administrative Law Judge found claimant has 10 percent permanent partial disability to her right upper extremity. Claimant argues she also has permanent disability in her left upper extremity and is entitled to have an award for an unscheduled or whole body disability. Claimant has returned to work at a comparable wage, 90 percent or more of her preinjury wage, and therefore makes no claim for work disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be modified. The Board concludes claimant has permanent

impairment to the left upper extremity as well as the right and is entitled to benefits based on a whole body impairment of 12 percent.

Respondent manufactures kitchen and bathroom cabinets. Claimant worked for respondent as an inspector. As part of those duties, she sanded cabinet faces. The Board concludes claimant has proven by a preponderance of the credible evidence that she suffered permanent impairment to both upper extremities. This conclusion is based on the results of the EMG, the opinion and findings by Dr. Edward J. Prostic, and claimant's testimony.

In 1996, claimant began having upper extremity numbness and pain and it is clear that claimant had these symptoms in both upper extremities. Respondent sent claimant first to Dr. A. Moorhead. Dr. Moorhead treated claimant with splints and physical therapy before referring claimant for an EMG. The EMG was positive for bilateral carpal tunnel syndrome, mild to moderate on the right and mild on the left.

Claimant was then referred to Dr. Harry A. Morris, an orthopedic physician. Dr. Morris first saw claimant in September 1997. He initially treated claimant with splints, exercise, and steroid injections. Dr. Morris also examined claimant for complaints to the right shoulder. In February 1998, Dr. Morris did carpal tunnel surgery on the right. Sometime before the surgery, respondent changed claimant's job. After the surgery, claimant returned to work and Dr. Morris then saw claimant in March, April, and May 1998. Dr. Morris testified claimant did not make complaints of problems on the left after the surgery to the right and, as a result, he did not examine claimant's left upper extremity after the surgery. Dr. Morris rated claimant's impairment as 3 percent of the right upper extremity. He concluded claimant had no permanent impairment to the left upper extremity or the right shoulder.

Claimant saw Dr. Prostic upon referral from claimant's counsel. Dr. Prostic diagnosed right carpal tunnel syndrome with successful surgery. In addition to the complaints on the right, claimant complained of occasional numbness on the left, especially when doing repetitious motions. Dr. Prostic found a positive Tinel test on the left and tenderness at the lateral epicondyle. He opined claimant has mild left carpal tunnel syndrome that is likely to worsen if she returns to work requiring forceful use of her hands. Finally, he diagnosed lateral epicondylitis of the left elbow. Dr. Prostic rated the impairment as 12 percent of the whole person.

When the parties could not agree on the extent of claimant's functional impairment, the ALJ appointed Dr. Thomas P. Phillips to perform an independent medical examination. On the intake form for Dr. Phillips, claimant indicated she was having problems with the left and right wrists. He did not examine the left upper extremity and testified, from his report, claimant told him she was not having any significant problems with the left upper extremity since changing her job duties. Dr. Phillips rated claimant's impairment as 10 percent to the right upper extremity.

Claimant testified in August 1999 that she continues to have numbness in the left upper extremity. She also testified she told Dr. Phillips she was still having problems in the left upper extremity and was surprised when he did not examine her on the left. Claimant testified she

might have told Dr. Phillips the symptoms on the left hand had lessened but she denied telling Dr. Phillips that the symptoms on the left had resolved.

As stated above, the Board concludes claimant has bilateral permanent impairment. The EMG was positive on the left as well as the right. The only physician to examine the left extremity after the surgery on the right testified claimant has a positive Tinel's on the left. Claimant testified to continuing problems on the left. For these reasons, the Board agrees with and adopts the rating by Dr. Prostic, a rating of 12 percent permanent impairment to the whole person.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish on January 5, 2000, should be, and the same is hereby, modified.

WHEREFORE AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Diana L. Everson, and against the respondent, Prestige, Inc., and its insurance carrier, Liberty Mutual Insurance Company, for an accidental injury which occurred August 11, 1998, and based upon an average weekly wage of \$432.32, for 1.57 weeks of temporary total disability compensation at the rate of \$288.23 per week or \$452.52, followed by 49.8 weeks at the rate of \$288.23 per week or \$14,353.85, for a 12% permanent partial disability, making a total award of \$14,806.37, all of which is presently due and owing in one lump sum less amounts previously paid.

The Appeals Board also approves and adopts all other orders entered by the Award not inconsistent herewith.

IT IS SO ORDERED.

Dated this ____ day of March 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: William L. Phalen, Pittsburg, KS
Gregory D. Worth, Lenexa, KS

Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director